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Attorney for Plaintiff Derek Matthews

Attorney for Defendants J. Price, A. Tout,  
And B. Sysombath

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

DEREK MATTHEWS

Plaintiff,

vs.

DEMITA PINCHBACK, et al.,

Defendants.

Case No.: 2:22-cv-1329 DJC KJN P

**STIPULATION AND ORDER  
ON *EX PARTE* MOTION FOR EARLY  
SUMMARY JUDGMENT MOTION  
(ECF 30)**

Judge: Hon. Kendall J. Newman  
Courtroom: 25, 8<sup>th</sup> Floor

WHEREAS on December 9, 2022, Plaintiff's prior counsel filed a motion to withdraw as Plaintiff's counsel, based on a medical condition that required her withdrawal (ECF 21);

WHEREAS on December 27, 2022, Defendants Price, Tout, and Sysombath (collectively referred to as "CDCR Defendants" filed an *ex parte* motion for leave to file an early summary judgment motion on the issues of failure to exhaust administrative remedies and statute of limitations (ECF 30);

WHEREAS Plaintiff's prior counsel filed an opposition brief to *ex parte* motion on December 29, 2022 (ECF 36);

STIP AND ORDER ON *EX PARTE* MOTION FOR EARLY SUMMARY JUDGMENT MOTION (ECF 30)

*MATTHEWS V. PINCHBACK, ET AL.*, CASE No. 2:22-cv-1329 DJC KJN P

1 WHEREAS the CDCR Defendants filed a reply brief to their *ex parte* motion on  
2 December 30, 2022 (ECF 37);

3 WHEREAS by this Court's order, dated April 6, 2023, this case was reassigned to the  
4 Honorable Daniel J. Calabretta. (ECF 45.) The order stated that all pending motions were  
5 deemed submitted without appearance and without oral argument;

6 WHEREAS on April 26, 2023, Plaintiff's present counsel was appointed as limited  
7 purpose counsel (ECF 46);

8 WHEREAS Plaintiff's counsel has reviewed the prior briefing on the pending *ex parte*  
9 motion and believes that this motion can be resolved by way of stipulation;

10 WHEREAS the parties seek to resolve the pending *ex parte* motion without the need for  
11 further court intervention;

12 IT IS HEREBY STIPULATED AND AGREED by the parties as follows:

- 13 1. Within fourteen (14) days of the date of this Court's Order on the pending motion to  
14 dismiss by Defendant Pinchback (ECF 20), the CDCR Defendants may file and serve  
15 a motion for summary judgment exclusively on the issues of whether Plaintiff  
16 exhausted his administrative remedies prior to filing this action as required by the  
17 Prison Litigation Reform Act, 42 U.S.C. § 1997e(a) and whether this action is barred  
18 by the applicable statute of limitations;
- 19 2. Within thirty (30) days of any summary judgment filed by the CDCR Defendants, as  
20 described in ¶ 1 above, Plaintiff may file an opposition to the summary judgment  
21 and/or a motion for summary judgment by Plaintiff on the same issues identified in ¶  
22 1 above;
- 23 3. After the CDCR Defendants file their summary judgment motion as described in ¶ 1  
24 above, the parties will meet and confer on whether an affirmative summary judgment  
25 motion by Plaintiff on the same issues is necessary;
- 26 4. The CDCR Defendants may file a reply brief on their motion for summary judgment  
27 within fourteen (14) days after Plaintiff's opposition is filed;  
28

- 1 5. Briefing on any summary judgment motion filed by Plaintiff shall comply with Local  
2 Rule 230; and
- 3 6. Any motions for summary judgment filed pursuant to this Stipulation shall not  
4 preclude any party from filing a subsequent motion for summary judgment on the  
5 merits of Plaintiff's claims should the case proceed after a decision on the exhaustion  
6 and statute of limitations issues; and
- 7 7. All discovery in this matter, other than discovery directly related to the issues of  
8 exhaustion and statute of limitations, shall be stayed until a decision is issued on the  
9 motion(s) for summary judgment for failure to exhaust administrative remedies and  
10 based upon the statute of limitations.

11  
12 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD:**

13 Dated: May 15, 2023  
14 Oakland, California

**JUSTICE FIRST**

/s/ Jenny Huang (as authorized on May 18, 2023)

Jenny C. Huang  
Attorney for Plaintiff Derek Matthews

17 Dated: May 18, 2023  
18 Los Angeles, California

**ATTORNEY GENERAL OF CALIFORNIA**

Audra C. Call

Audra C. Call  
Deputy Attorney General  
Attorney for Defendants Price, Tout and Sysombath

21 **IT IS SO ORDERED. (ECF No. 30.)**

22 Dated: May 24, 2023

24 Kendall J. Newman  
25 KENDALL J. NEWMAN  
26 UNITED STATES MAGISTRATE JUDGE

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